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Case No. 432

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

LOCAL 63

TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Petitioner

VS.

CHENEY BROTHERS

Respondent

PETITIONER'S REPLY BRIEF

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Respondent contends that the action of the Supreme Court of Errors, in deciding that the question of modification of the cost-of-living clause was arbitrable on a theory which had not previously been advanced and on which petitioner had no opportunity to submit evidence or make any argument, was consistent with established appellate procedure in this state. It quotes as authority for this contention the case of *Leary v. Citizens and Manufacturers National Bank*, 128 Conn. 475, 478, 23, A2d, 863. That case is not in point as readily appears from the complete quotation which is printed in the footnote.[1]

It is true that the Supreme Court of Errors may of its own motion consider an error apparent on the record when the public character of the case and its importance not only to the

[1] "* * * Another claim of the plaintiff is that the defendant's failure distinctly to raise on the trial the claim of law contained in its assignment of errors precludes it from relief upon this appeal. Section 5689 of the General Statutes permits an appeal from the decision of the court upon any question of law arising in the trial. Section 363 of the Practice Book provides: 'ERRORS CONSIDERED. This court shall not be bound to consider any errors on an appeal unless they are specifically assigned and unless it appears on the

parties but to the public are deemed sufficient to warrant such a course and to prevent manifest injustice as where it appears that both counsel and the court below overlooked an applicable statute. In those rare situations, however, where the court has of itself raised an issue not presented by the parties, it has ordered reargument of the case giving the parties an opportunity to be heard. *Adley Express Co. v. Darien*, 125 Conn. 501, 504; *Columbus Industrial Bank v. Miller*, 125 Conn. 313, 316. That there was no error manifest on the record in the instant case is obvious from respondent's footnote 2 on p. 6 of its Brief in which it takes pains to make it clear that it does not necessarily agree with the conclusion of the Supreme Court of Errors.

Respectfully submitted,

LOUISE H. HUNT

IRVING S. RIBICOFF

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record that the question was distinctly raised at the trial and was ruled upon and decided by the court adversely to the appellant's claim, or that it arose subsequent to the trial.' Section 157 of the Practice Book requires that in trials to the court if counsel intends to raise any question of law which may be the subject of an appeal he shall call the same distinctly to the court's attention. The plaintiff's contention rests upon these two provisions of the rules. These do not, however, preclude this court from considering questions of law which were not raised before the trial court. While we are not 'bound to consider' such claims of error, and do not ordinarily do so, we have upon occasion considered a question which was not so raised, not by reason of the appellant's right to have it determined but because in our opinion in the interest of public welfare or of justice between individuals it ought to be done. *Rindge v. Holbrook*, 111 Conn. 72, 75, 149 Atl. 231; *Boardman v. Burlingame*, 123, Conn. 646, 655, 197 Atl. 761. Accordingly we have followed this course where the error was manifest (*Riggs v. Zaleski*, 44 Conn. 120, 121; where an applicable statute was overlooked (*Cunningham v. Cunningham*, 72 Conn. 157, 160, 44 Atl. 41; *Schmidt v. Manchester*, 92 Conn. 551, 555, 103 Atl. 654; *Stevens v. Neligon*, 116 Conn. 307, 311, 164 Atl. 661; *Adley Express Co., Inc. v. Darien*, 125 Conn. 501, 504, 7 Atl. (2d) 446); and where the error went to a vital issue in the case (*Fairfield v. Newton*, 75 Conn. 515, 518, 54 Atl. 301; *Wicks v. Knorr*, 113 Conn. 449, 456, 155 Atl. 816; *G. & H. Investment Co. v. Raymond*, 113 Conn. 778, 779, 155 Atl. 497). See Conn. App. Proc., p. 60. These situations all exist in the present case. It is undisputed that the statute was overlooked. * * *"